SUPREME COURT, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO. 73-627

RICHARD ANTHONY MAYES,
Petitioner

V.

THE STATE OF TEXAS,
Respondent

On Petition for Writ of Certiorari to the
County Criminal Court at Law No. 4 of
Harris County, Texas

RESPONDENT'S BRIEF IN OPPOSITION

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OPINION BELOW

There was no opinion rendered below. Certiorari is sought to review a judgment of conviction of the County Court at Law No. 4 of Harris County, Texas, entered on June 11, 1973.

JURISDICTION

The timely filing requirements for a petition for a writ of certiorari seem to have been fulfilled in this case. Moreover, in view of a fine assessed in this case, there is, as Petitioner states, no further right to appeal the judgment of the County Court of Harris County. Respondent disputes that any rights guaranteed by the United States Constitution were denied the Petitioner in this case.

THE ORDINANCE INVOLVED

The ordinance that is the subject of these certiorari proceedings is set out at page 2 in the petition for certiorari.

QUESTIONS PRESENTED

Petitioner asserts that the following two questions are presented in these proceedings:

1. Whether an ordinance which provides criminal penalties for disguising true sex by dressing as a member of the opposite sex violates the constitutionally protected right of privacy.

2. Whether the Eighth Amendment's prohibition against cruel and unusual punishment, as applied to the States through the Fourteenth Amendment, is violated by the conviction of petitioner solely because of his status as a transsexual.

STATEMENT OF THE CASE

For the purposes of this brief, Respondent accepts the factual allegations contained in Petitioner's Statement of the Case appearing at page 2 of the petition although Petitioner questions the medical evidence adduced concerning transsexualism.

Certainly, Petitioner who is a male, was arrested for being dressed as a woman in public in the city of Houston, Harris County, Texas. It is the conviction for this circumstance, pursuant to the ordinance of the city of Houston, that is the subject of the present proceedings.

ARGUMENT AND AUTHORITIES

The Ordinance Of The City Of Houston Proscribing Persons From Going Into Public Dressed Or Disguised As A Member Of The Opposite Sex Serves A Legitimate State Interest And Is So Constitutional

Society is presently thought to have an interest in barring homosexual acts since homosexuality is, at least partially, an acquired or taught trait. Our society deems it important not to have its youth learning to be homosexual rather than heterosexual. This interest is in part rooted in the survival of the race; procreation is necessary to ensure the continuation of the human race.

Likewise, dressing or disguising as a member of the opposite sex is a step toward creating homosexual rela-

tionships and so can be proscribed in the same manner as more overt homosexual conduct.

Whether or not society is correct in making the foregoing judgments, through its representatives in the various legislative bodies of this country, is not material. The wisdom of such legislative bodies should not be set aside by the courts. *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 491 (1955); *Ferguson* v. *Skrupa*, 373 U.S. 726 (1963). There is a valid state objective, the continuation of the human race, and the legislative wisdom in enacting the ordinance preventing sex disguise should be upheld.

There are other justifiable state objectives in legislation prohibiting a person from appearing in public disguised as a member of the opposite sex. An ineffective disguise may engender cat-calls and slurring remarks leading to a breach of the peace. An efficient disguise could lead to trouble after an acquaintance is formed with the disguisee and the true sex is disclosed when the friendship becomes amorous.

Accordingly, the Houston disguise ordinance should be upheld as protecting a valid state interest.

CONCLUSION

For the reasons stated above, the Petition for Writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Lonny F. Zwiener, Assistant Attorney General of Texas, Attorney for Respondent, do hereby certify that a copy of the above and foregoing Respondent's Brief in Opposition has been deposited in the United States Mail, postage prepaid, first class, certified on this the 21st day of February, 1974, to the following address: Mr. Melvin L. Wulf, Esq., ACLU Foundation, 22 East 40th Street, New York, New York 10016.

LONNY F. ZWIENER
Assistant Attorney General